

2-10-03

ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

FILED
HARRISBURG, PA

MAR 3 2003

MARY E. D'ANDREA, CL
Per Deputy Clerk

KIM SMITH,

Plaintiff,

v.

JAMES MORGAN, et al.,

Defendants.

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Civil No. 1:01-CV-0817

(Judge William W. Caldwell)

(M.J. Malachy E. Mannion)

CORRECTIONS DEFENDANTS'
MOTION FOR AN ENLARGEMENT OF TIME TO FILE BRIEFS IN
SUPPORT OF MOTION FOR SUMMARY JUDGMENT

The Corrections Defendants, by and through their attorney, John J. Talaber, Assistant Counsel, Pennsylvania Department of Corrections, pursuant to Fed.R.Civ.P. 6(b) respectfully requests this Honorable Court to grant an enlargement of time until March 10, 2003 to file their Brief in Support of their Motion for Summary Judgment and Statement of Material Facts. The following averments are made in support of this Motion:

Parties and Nature of Action:

1. Plaintiff Kim Smith is an inmate currently incarcerated at the State Correctional Institution at Coal Township ("SCI-Coal Township"). See Amended Complaint (doc. 20), p. 12.

2. The Department of Corrections Defendants ("Corrections Defendants") include: (1) Kathy Allen; (2) Nancy Ambrose; (3) Mary Bernas; (4) Sharon Burks; (5) Kandis Dascani; (6) John Dunn; (7) Harry Ersek; (8) Frank Gillis; (9) Robert Glenney; (10) Robert Gooler; (11) Dr. Robyn Johns; (12) Roy Johnson; (13) Tim Jordan; (14) Bernon Lane; (15) John Learn; (16) Edward Mason; (17) Miller; (18) James Morgan; (19) Wilma Sewell; (20) Raymond Smith; (21) David Varano; (22) Voeckler; (23) George Weaver; (24) Lynn Wolfgang; (25) Gerald Whysong; (26) Pat Yarger; (27) Angela Zimmerman; and (28) Hazel Zimmerman. See Amended Complaint, pp. 1-16.
3. Smith also names as Defendants Wexford Health Services, Inc. and Dr. Ronald Long, who are represented by James D. Young, Esquire. See Entry of Appearance (doc. 28).
4. In this 42 U.S.C. §1983 action, Smith alleges that the Corrections Defendants violated his First, Eighth, and Fourteenth Amendment rights under the United States Constitution. See Amended Complaint, pp. 1-16.
5. Smith is suing the Corrections Defendants in their individual capacities. See Amended Complaint, p.8.
6. Smith seeks injunctive relief, as well as, compensatory and punitive damages. See Amended Complaint, pp. 1-16.

Relevant Procedural History:

7. Smith initiated this action with the filing of a Complaint and an Application for In Forma Pauperis status on May 10, 2001. See Complaint (doc. 1); Application to proceed IFP (doc. 2).
8. The Court, by Order dated June 6, 2001, directed Smith to file an Amended Complaint on or before July 6, 2001. See Order (doc. 8).
9. On July 11, 2001, Smith filed an Amended Complaint. See Amended Complaint (doc. 20).
10. On August 3, 2001, the Court found that Smith's Amended Complaint substantially complied with its previous orders, and directed the Clerk of Court to serve process on the Defendants. See Order (doc. 24).
11. On or about September 26, 2001, the undersigned attorney waived service of summons for the Corrections Defendants.
12. On November 6, 2001, the Corrections Defendants waived their right to reply to Smith's Amended Complaint pursuant to 42 U.S.C. §1997(e). See Waiver of Reply (doc. 33).
13. On October 24, 2002, the Court granted the Defendants' Motion for discovery and dispositive motion deadlines; specifically, the Court directed that discovery be completed on or before November 12, 2002, and dispositive motions filed by December 13, 2002. (doc. 89)

14. On December 13, 2002, the Corrections Defendants' filed a Motion for Summary Judgment. (doc. 99)
15. The Defendants, after three Motions for Enlargement of Time, filed a Motion to Sever the action for purposes of their Briefs in Support to the Motion for Summary Judgment. (docs. 103, 105, 111, 113, 117, 121, 124).
16. The Court, by Order dated February 11, 2003, granted Defendants Motion to Sever and directed the Briefs to be filed on or before February 20, 2003.
17. On February 20, 3002, Attorney Talaber filed a motion for enlargement of time to file the briefs in support of the Corrections Defendants' Motion for Summary Judgment on or before March 3, 2002.
18. That motion was granted; however, due to unexpected circumstances Attorney Talaber requests this additional enlargement of time.

Motion for Enlargement:

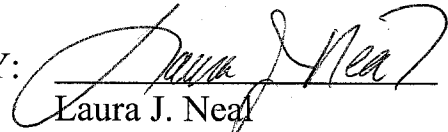
17. The Corrections Defendants, by and through their undersigned attorney, respectfully request an enlargement of time until March 10, 2003.
20. Attorney Talaber has been able to complete all declarations relating to the motion for summary judgment, as well as the supporting briefs.
21. However, one of the declarants, an official in the Secretary's Office of Inmate Grievances and Appeals has contacted Attorney Talaber's legal assistant with several issues relating to her declaration.

22. Attorney Talaber is not available to discuss the issues relating to the above-mentioned declaration because he is out of the office caring for his father. John Talaber's father was diagnosed preliminarily with metastatic cancer on Friday, February 28, 2003 and is unable to care for himself.
23. This is the third motion for enlargement of time in this matter.
24. James D. Young, Esq., Counsel for the co-Defendants, concurs in this motion.
25. This motion is not submitted for the purpose of needless delay or prejudice to the Plaintiff.

WHEREFORE, for the reasons set forth above, the Corrections Defendants respectfully request this enlargement of time until March 10, 2003 to file their Statements of Material Facts and Supporting Briefs to their Motion for Summary Judgment.

Respectfully submitted,
Office of General Counsel

BY:



Laura J. Neal
Assistant Counsel
Pa. Department of Corrections
55 Utley Drive
Camp Hill, PA 17011
(717) 731-0444
Attorney No. 81070

Dated: March 3, 2003

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FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

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(Magistrate Judge Malachy E. Mannion)


CERTIFICATE OF SERVICE

I undersigned hereby certifies that a copy of the Corrections Defendants' Motion for an Enlargement of Time To File Briefs in Support of Motion for Summary Judgment in this matter was served upon the person(s) in the manner indicated below.

Service by first-class mail
addressed as follows:

Kim Smith, CT-2162
SCI-Coal Township
1 Kelley Drive
Coal Township PA 17866-1020

James D. Young, Esquire
Lavery Faherty Young and Patterson P.C.
301 Market Street
P.O. Box 1245
Harrisburg, PA 17108-1245


Deborah Bryan
Clerk Typist 2

PA Department of Corrections
55 Utley Drive
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(717) 731-0444
Dated: March 3, 2003